IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE M.H.S. ANSARI

WRIT PETITION No.12730 of 1993

Between:

P.Peddi Raju, S/o.Lakshmipathi Raju,
Sri Ch.V.P.Murthy Raju College,

Ganapavaram, Ganapavaram Mandal
West Godavari District - 534 198.

..... PETITIONER

AND

1.The Government of Andhra Pradesh, rep. by the Secretary, Education Department, Secretariat, Hyderabad.
2.The Commissioner of Collegiate Education, Nampalli, Hyderabad.
3. Principal, S.C.I.M. Government College, Tanuku, West Godavari District.
4. Principal, Sri Ch.V.P.Murthy Raju College, Ganapavaram, West Godavari District.
5.Sub -Treasury Officer, Tadepalligudem.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly in the nature of writ of mandamus, directing the respondents to continue to treat the petitioner as a Head Clerk of the Sri Ch.V.P.Murthy Raju Degree College, Ganapavaram in the cadre of Head clerk only and to continue to pay his salary as usual on the same scale as he was drawing prior to 1.7.1993 with all the attendant benefits as usual pertaining to that scale, declaring that the audit objections raised in the audit reports of the years 1988-89, 1989-90 and 1990-91 regarding the salary and the pay scales of the petitioner are all unsustainable and that the objections of the 2nd respondent in this regard are also untenable.

Counsel for the Petitioner: Mr.D.RAMALINGA SWAMY

Counsel for Respondent Nos.1, 2 & 5: G.P. FOR HIGHER

EDUCATION

Counsel for Respondent Nos.3 & 4: None appeared.

The Court made the following :

THE HON'BLE SRI JUSTICE M.H.S.ANSARI

WRIT PETITION No.12730 of 1993

ORDER:

The short question arising for consideration in the instant writ petition is with regard to the scale of pay applicable and payable to the petitioner.

For consideration of the above question, a few facts need to be stated. The petitioner was appointed as Attender on 28-7-1964 in an educational institution under private management. He was later promoted as Clerk in 1965. The petitioner was subsequently promoted as Head Clerk on 24-4-1975 and posted to a college being one of the institutions run under the erstwhile management. The said college is a recognised and aided institution. The staff pattern was prescribed for aided colleges as per Proceedings No.203/D1/63, dated 26-6-1965. It is not disputed that according to the said staff pattern, the college was entitled for one post of Head Clerk.

It is to be noticed that in G.O. (P) No.235, Finance & Planning Department, dated 17-9-1979, which revised the pay scales of 1974 and is referred to as the Revised Pay Scales, 1978 (RPS,1978), the corresponding entries in Schedule I, Grade XII and Grade XIII are as under:

SCHEDULE – I

(RPS, 1978)

Grade	Existing Scale	Revised Pay Scale 1978

XII Rs.340-16-532-18-640/- 575-20-775-25-950/-

XIII Rs.360-18-540-20-700/- 600-25-900-50-1050/-

It must also be mentioned here that Schedule I does not prescribe the posts, but only specifies Grades, existing scales and corresponding revised pay scales. There is no dispute that the petitioner was entitled to the revised pay scales 1978. It is also not in dispute that as the petitioner completed ten (10) years of service in the same Grade, he was awarded the next Grade in the pay scale of Rs.600-25-900-30-1050/- by the orders of the District Educational Officer dated 13-12-1985 and entered in petitioner's service record. This was the scale of pay being availed of by the petitioner when the RPS, 1986 came into effect.

RPS, 1986 came into effect and was implemented with effect from 1-7-1986 vide G.O.Ms.No.288, dated 17-11-1986. The work relating to fixation of pay in terms of RPS, 1986 with respect to non-teaching staff working in aided colleges was entrusted to Local Fund authorities/Districts. The Local Fund authorities of West Godavari District fixed the pay of the petitioner in the scale of Rs.1330-2630/-. Objection was taken by the Audit on the ground that petitioner is not eligible to draw pay in the scale of Rs.1330-2630/-. The reasons for such objection taken by the Audit are not stated in the counter affidavit nor any record with respect thereto has been placed before this Court. However, in the counter affidavit affirmed on behalf of the respondents by the Joint Director, Office of the Commissioner of Collegiate Education (second respondent), different stands have been taken. One such stand in the counter affidavit is that as per the Government Orders, the post of Head Clerk was re-designated as Senior Assistant and the petitioner was allowed corresponding scale of Rs.575–20-775-25-950/-. Despite opportunity afforded to the respondents to produce the said Government Orders, the same were not placed before the Court. No reliance can, therefore, be placed upon the alleged re-designation of the post in question.

In the counter affidavit, another ground of defence is to the effect that "in this connection, it is submitted here that in G.O.(P) No.235, Fin. & Plg. Dated 17-9-1979 Government clearly stated that if the posts are not included in Schedule (Departmental pay schedule of R.P.S. 1978 pay scales) the corresponding scale should be allowed in the Education Department under Schedule-II there is no Head

Clerk post, hence the corresponding scale of 1978 scale was allowed to the petitioner." From the said statements in the counter affidavit, it is obvious that as the post of Head Clerk was not specified in Schedule-II, RPS, 1978, the petitioner was granted corresponding scale Rs.575-950/-. It is thus admitted that as per RPS, 1978 that was the scale to which the petitioner was held to be entitled to and was accordingly granted the same. RPS, 1986, with which we are concerned, specifies the post of Head Clerk and also the existing scale Rs.575-950/- and corresponding revised scale in Schedule II.

At another place in the counter affidavit it is stated that "since the petitioner completed 10 years of service in the cadre of Head Clerk he was awarded the special grade in R.P.S. 1978 and pay fixed in the scale of pay of Rs.600-25-900-30-1050." In other words, the only defence of the respondents to the claim of the petitioner appears to be that as the petitioner was granted the pay scale i.e., Rs.600-25-900-30-1050/-, the same should be taken as the existing scale of pay (RPS 1978) and the corresponding pay scale in RPS 1986 being Rs.1150-2110/-, the petitioner is entitled to the said scale of pay and not Rs.1330-2630/- (Schedule II, RPS 1986), which has been approved by the Local Fund authorities. This is the core of the controversy which needs to be resolved in the instant writ petition.

There is no dispute that the petitioner is continuing as Head Clerk and also there is no dispute that he is entitled to continue as Head Clerk. The dispute is only with regard to the applicable scale of pay. It is the contention of the respondents that the petitioner is entitled to draw the scale of pay in terms of RPS, 1986 in the scale of Rs.1150 – 2110/- in Schedule I, whereas the claim of the petitioner is to the scale specified in Schedule II to RPS, 1986.

For the sake of convenience, the respective Schedules I (relied upon by the respondents) and II (relied upon by the petitioner) to the extent relevant, are extracted hereunder.

SCHEDULE I SCHEDULE II

(RPS 1986)

Grade	Existing Scale	RPS 1986		Sl.No.	Category	Existing Scale.	RevisedScale

XIII	600-25-900-30-1050.	1150-40-1510-50-2110.		6	Head Clerk	575-950	1330-2630

The controversy thus boils down to the applicability of the scales prescribed under RPS, 1986.

In the definition Section 2 of RPS, 1986, the expressions “existing scale of pay” and “revised pay scales, 1986” have been defined as under.

iii) “existing scale of pay” means the Revised Pay Scales of 1978.

iv) “Revised Pay Scales, 1986” means the Revised Pay Scales set out in column (3) in Schedule –I or in column (4) in Schedule-II as the case may be.”

With regard to the applicability of Schedule I or Schedule II, Rule 3 is relevant and for that reason is extracted hereunder.

“ 3 i) Except as otherwise provided in sub-rule 2, the existing scales of pay specified in column (2) of schedule I shall be revised as specified in the corresponding entry in column (3) of the said schedule.

ii) Where, in the case of any post on an existing scale of pay specified in column (2) of Schedule-I, a revised scale of pay other than the revised scale of pay specified in the corresponding entry in column (3) of that Schedule is specified in column (4) of Schedule II, the revised scale of pay so specified in column (4) of Schedule II shall apply.”

It is the contention of Sri D.Ramalinga Swamy, learned counsel for the petitioner that the post of Head Clerk is specifically mentioned in Schedule II and, therefore, in terms of sub-rule (ii) of Rule 3 of the A.P. Revised Scales of Pay Rules, 1986, the petitioner is entitled to the revised scale of pay specified in column 4 of Schedule II corresponding to the existing pay meaning thereby the revised scale of pay of 1978 (Rs.575-950/-) .

Whereas, the contention of learned Govt. Pleader for Higher Education on behalf of the respondents is that the petitioner is entitled to fixation of pay as per revised pay scales 1986 (RPS, 1986) corresponding to the existing scales in Grade XIII- Rs.600-1050/- (RPS 1978). This contention is founded on the ground that the petitioner was enjoying the pay scale Rs.600-1050/- which should be regarded as

'existing scale' in terms of definition clause and, therefore, the corresponding revised scale 1986 to which the petitioner is entitled is Rs.1150-2110/-.

The rival contentions have to be tested on the construction of Rule 3 of RPS 1986. Sub-rule (i) of Rule 3 starts with the expression "except as otherwise provided in sub-rule (2)" and states that the existing scales of pay specified in column 2 of Schedule I shall be revised as specified in the corresponding entry in column 3 of Schedule I. In other words, unless sub-rule (ii) applies, the revised pay scale is to be fixed corresponding to the existing scale in terms of Schedule I. As already noticed, the scale corresponding to Grade XIII i.e., Rs.600-1050/- is Rs.1150-2110/-. It is based on this that the respondents contend that the petitioner is entitled to the aforesaid scale of Rs.1150-2110/- and that sub-rule (ii) and Schedule II have no application.

On the other hand, as already noticed, the contention of the petitioner is that as the post of Head Clerk has been specifically mentioned in Schedule II of RPS, 1986, the corresponding revised scale applicable to the post of Head Clerk in the scale of Rs.575-950/- specified in Schedule II is to be granted and that has been rightly granted to the petitioner. This contention has to be tested in the light of sub-rule (ii) of Rule 3 of RPS, 1978.

Sub-rule (ii) of Rule 3 states that in case where any existing scale of pay specified in column 2 of Schedule I, a revised scale of pay other than the revised scale of pay specified in the corresponding entry in column 3 of Schedule I is specified in column 4 of Schedule II, the revised scale of pay specified in column 4 of Schedule II will apply. In other words, Schedule II is applicable where for an existing scale of pay, the revised scale of pay as specified column 4 of Schedule II is different from column 3 of Schedule I. In such an event, the revised scale of pay specified in column 4 of Schedule II shall apply.

Column 4 of Schedule II specifies the revised scale of Rs.1330-2630/- corresponding to the existing scale of Rs.575-950/-. If the existing scale of pay, which means, as defined in RPS, 1986, the revised pay scale of 1978, is taken as Rs.575-590/-, there is no doubt that Schedule II would apply to the case of the petitioner as contended because of the difference in the revised scales of pay specified in Column 4 of Schedule II when compared to Column 3 of Schedule I. As noticed earlier, the said scale of pay in Column 4, Schedule II is being denied to the

petitioner only on the ground that the scale of pay enjoyed by the petitioner was Rs.600-1050/-, being the upgraded pay.

The upgradation of scale in pay of the petitioner is not in dispute. The petitioner was entitled to and was in fact granted the scale of Rs.575-950/- in terms of RPS, 1978, the same was subsequently upgraded for the reasons, as already noticed, extracted elsewhere in this judgment. This upgradation was done by the orders of DEO on 13-12-1985 and entered in the petitioner's service record on 31-12-1985. Can this be regarded as the existing scale of pay as contended on behalf of the respondents for the determination of the corresponding scale of pay under RPS, 1986? The contention of the learned Govt. Pleader is that the petitioner cannot give a go-bye or ignore the scale Rs.600-1050/- availed of by him and claim on the basis of scale of Rs.575-950/-.

Having considered the rival contentions of the learned counsel for the respective parties on this aspect of the matter, I am of the view that the contention of the learned Govt. Pleader has no merit. As per RPS, 1978, the petitioner was entitled to the revised pay scale of Rs.575-950/-. There is no dispute that the said scale of pay was granted to the petitioner and was availed of by him until upgraded scale was granted by the DEO. The rules governing such upgradation of scale of pay have not been placed before this Court. In this connection, it is to be noticed that according to paragraph 14 of G.O.Ms.No.288, dated 17-11-1986 (RPS, 1986), revised pay scales of special grades/special promotion posts/special ad hoc posts in respect of those who are already enjoying the benefits of automatic advancement scheme, revised scales of pay of special grade posts, special promotion posts and special ad hoc promotion posts shall be determined based on the revised scale of original post. In paragraph 15, the higher scales corresponding to the relevant scale of special grade posts in the revised scales are shown in Schedule III. It is nobody's case that the post of 'Head Clerk' is a special grade post. A perusal of Schedule III (RPS, 1986) would show that the upgraded scale relied upon by the respondents viz., Rs.600-1050/- is also not specified therein. In other words, neither Schedule III nor paragraph 14 and paragraph 15 of RPS, 1986 apply to the case of the petitioner. In the absence of *in pari materia* provisions like paragraphs 14 and 15 with respect either to the post in question or the upgraded scale, it must be held that the 'existing scale of pay' in terms of the definition in Rule 2 (iii) must receive the meaning as contained therein meaning thereby the revised pay scales of 1978. The revised pay

scale of the petitioner, admittedly, was Rs.575-950/- in terms of RPS, 1978 and, therefore, the upgraded scale cannot be regarded as the ‘existing scale of pay. Consequently the revised pay scale in terms of RPS, 1986 would be the corresponding scale set out in Column 4 of Schedule II, viz., Rs.1330-2630/-. The petitioner is, therefore, entitled to the said scale of pay and denial thereof is based upon grounds which cannot be sustained.

The writ petition is accordingly allowed. Rule is made absolute.

No order as to costs.

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February 2005. (M.H.S.ANSARI, J.)

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To

1.The Secretary, Education Department, Secretariat, Government of Andhra Pradesh, Hyderabad.
2.The Commissioner of Collegiate Education, Nampalli, Hyderabad.
3. The Principal, S.C.I.M. Government College, Tanuku, West Godavari District.
4. The Principal, Sri Ch.V.P.Murthy Raju College, Ganapavaram, West Godavari District.
5.The Sub -Treasury Officer, Tadepalligudem.

6.Two CCs to Govt. Pleader for Higher Education, High Court Bldgs., Hyderabad (OUT).

7)Two CD copies.